

REMARKS

The Examiner rejected Claims 4-14, 16, 17, 20-29 and 31-33. Claim 4 has been amended. The amendment to Claim 4 is supported by at least pages 18, Line 35 to Page 19, Line 5, and Line 28 to Page 20, Line 5, Page 27, Lines 8-28 and Figures 14-19 of the original specification. Applicant requests entry of the foregoing amendment. Reconsideration and allowance of Claims 4-14, 16, 17, 20-29 and 31-33 in light of the foregoing amendment and following remarks is respectfully requested.

Rejections under 35 U.S.C. § 102

Claims 4 and 31 are rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,280,451 to Bates, et al. (hereinafter “Bates”). A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference (M.P.E.P. § 2131). Applicant respectfully submits that amended Claim 4 is not anticipated by Bates for at least the reasons discussed below.

Amended independent Claim 4 recites, among other things, an “expandable collecting basket of woven fiber . . . wherein at least one wire-like flexible adjustment element integrated with said woven fiber extends along an inner or outer surface of said basket from a proximal region of said basket to a distal region of said basket,” and that “the at least one collecting basket can be deliberately oriented by the at least one wire-like flexible adjustment element and changed in shape outside the channel element to expand sufficiently to increase the diameter of said cavity and enable the object to move within said cavity into said basket and to contract sufficiently to decrease the diameter of said cavity and enable capture of the object within said cavity of said basket.”

Bates discloses a releasable basket comprising basket loops 12 with an attached membrane material 40. *See* Bates, Column 7, Lines 33-38. The proximal end of the basket loops

12 attach to a cable 20, the cable 20, and at times the basket loops 12 and attached membrane material 40, are located in the lumen 22 of a sheath 18. *See Bates, Column 6, Lines 3-6.* Bates describes using the cable 20 to move the basket loops 12 and the membrane material 40 into and out of the lumen 22 of the sheath 18. *See Bates, Column 5, Lines 22-26.* Bates further discloses pre-established bias in the basket loops 12, biasing the loops 12, and thus the entire basket, to either an opened or closed position. In combination with this pre-established bias of the basket loops 12, Bates discloses use of the sheath 18 or rigid wires 32 to close the basket in embodiments in which the basket loops 12 are biased to an opened basket configuration, and flexible wires to open the basket when the basket loops 12 are biased to a closed basket configuration. *See Bates, Column 6, Lines 6-9, Lines 53-57, and Column 7, Lines 2-5.*

Applicant respectfully submits that Bates fails to disclose all of the features of amended Claim 4. As mentioned, the main embodiment of Bates discloses the use of a cable 20 to longitudinally move the basket loops 12 into and out of the lumen 22 of the sheath 18. However, apart from the cable 20, Bates does not disclose any other control connection between the basket loops 12 and the operator. Additionally, as the cable 20 is not the basket loops 12, even if the cable 20 could control the relative orientation of the basket, it would be the cable 20 and not the basket loops 12 responsible for that orientation. Accordingly, as Bates only discloses longitudinal control of the position of the basket loops 12, and as the cable 20 is responsible for that orientation, Bates does not disclose that “the at least one collecting basket can be deliberately oriented by the at least one wire-like flexible adjustment element” as recited in amended Claim 4.

Additionally, as discussed, Bates discloses two distinct embodiments of basket loops 12, either biased to an open position or biased to a closed position. In each of these embodiments, the basket loops 12 are configured to either open the basket or to close the basket. *See Bates, Column 6, Line 41 to Column 7, Line 6.* Additionally, in each of these embodiments, additional features are necessary to achieve the opposite configuration of the bias of the basket loops 12, including the sheath 18, rigid wires 32, or flexible wires 32. As the wires 32 are only capable of achieving either an opened or closed position and not both positions, Bates fails to disclose that “the at least one collecting basket can be deliberately oriented by the at least one wire-like flexible adjustment element and changed in shape outside the channel element to expand

Application No.: 10/527,390
Filing Date: October 17, 2005

sufficiently to increase the diameter of said cavity and enable the object to move within said cavity into said basket and to contract sufficiently to decrease the diameter of said cavity and enable capture of the object within said cavity of said basket" as recited by amended Claim 4.

Applicant also respectfully submits that replacing the stiff wires 32 which attach to the outer surface of the basket loops 12, which the Examiner cites as disclosing "wire-like flexible adjustment element[s]," with a "wire-like flexible adjustment element" would create an unworkable embodiment. In embodiments using stiff wires 32, the wires 32 push against the pre-established bias of the basket loops 12, forcing the basket loops 12 into a closed position. Replacement of these stiff wires 32 with flexible wire-like elements would result in an embodiment in which an operator could not overcome the bias of the basket loops 12 to attain a closed configuration.

In addition, the wires 32 are not "integrated with said woven fiber and extending along an inner or outer surface of said basket from a proximal region of said basket to a distal region of said basket" as recited in Claim 4. In contrast, to this language, wires 32 disclosed in Bates extend separate from and outside the structure of the basket. *See Bates, Figures 4A to 4D.* Accordingly, Bates fails to disclose "at least one wire-like flexible adjustment element integrated with said woven fiber extends along an inner or outer surface of said basket from a proximal region of said basket to a distal region of said basket" as recited in Claim 4.

The Examiner asserts that Bates discloses a distal opening in the basket. Applicant, however, respectfully submits that the opening disclosed in Bates is not distal as recited in Claim 4. As evident by operation of the basket loops 12, the opening disclosed in Bates extends longitudinally from the distal end of the device towards the proximal end of the device, enabling escape of bodies from sides of the device.

Applicant additionally notes the basket loops 12 are strengthened by support members 16. *See Bates, Column 5, Lines 65-66.* These support members 16 add strength to the basket in a vertical plane when the basket is extended. Since the basket according to the present invention is not just formed of loops but is formed of woven fabric having the wire-like adjustment elements extending along and within its body there is no need for any strengthening means. The basket

Application No.: 10/527,390
Filing Date: October 17, 2005

according to the present invention as shown in figures 14 to 19 of the present patent application is flexible and may be expanded or contracted to assist in capture of a body.

As Bates fails to disclose an “expandable collecting basket of woven fiber . . . wherein at least one wire-like flexible adjustment element integrated with said woven fiber extends along an inner or outer surface of said basket from a proximal region of said basket to a distal region of said basket,” and that “the at least one collecting basket can be deliberately oriented by the at least one wire-like flexible adjustment element and changed in shape outside the channel element to expand sufficiently to increase the diameter of said cavity and enable the object to move within said cavity into said basket and to contract sufficiently to decrease the diameter of said cavity and enable capture of the object within said cavity of said basket” as recited in amended Claim 4, Bates fails to anticipate all of the features of amended Claim 4. Accordingly, Applicant respectfully requests that the Examiner withdraw this rejection to Claim 4.

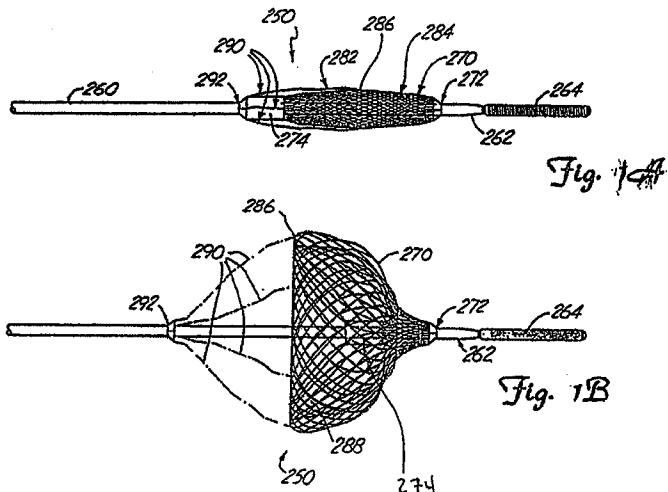
Rejections under 35 U.S.C. § 103

Claim 4 is also rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2002/0169474 (“Kusleika”) in view of Bates. Establishing *prima facie* obviousness requires a showing that each claim element is taught or suggested by the prior art. See *In re Royka*, 490 F.2d 981, 180 USPQ 580. (CCPA 1974). Applicant respectfully submits that amended Claim 4 is not obvious for at least the reasons discussed below.

As discussed above, Claim 4 recites an “expandable collecting basket of woven fiber . . . wherein at least one wire-like flexible adjustment element integrated with said woven fiber extends along an inner or outer surface of said basket from a proximal region of said basket to a distal region of said basket,” and that “the at least one collecting basket can be deliberately oriented by the at least one wire-like flexible adjustment element and changed in shape outside the channel element to expand sufficiently to increase the diameter of said cavity and enable the object to move within said cavity into said basket and to contract sufficiently to decrease the diameter of said cavity and enable capture of the object within said cavity of said basket.”

As also discussed above, Bates fails to teach these limitations. Applicant respectfully submits that Kusleika fails to cure these defects. Kusleika discloses extraction devices for

extracting objects from bodies. Fig. 1 and 2 depict the extraction device 250 relied upon by the Examiner. Fig. 1 is reproduced below:



The illustrated retrieval device comprises a guidewire 260 and a basket 270 having a proximal portion 282, a distal portion 284, and a proximal lip 286 defining a proximally-facing cup-shaped cavity 288 of the basket 270 in a deployed configuration. *See Kusleika, Paragraph [0012].* The basket 270 is attached to a distal band 272 and a proximal band 274. *See Kusleika, Paragraph [0008].* The device also includes tethers 290 attached on one end to the proximal lip 286, and attached on the other end to the guidewire 260 or to a strap 292 that is attached to the guidewire 260. *See Kusleika, Paragraphs [0015] and [0017].* The illustrated retrieval device is opened by moving the distal band 272 and the proximal band 274 to a position of greater proximity, and closed by sliding an external catheter distally, which distal movement forces the basket to close. *See Kusleika, Paragraphs [0011] and [0017] – [0020].*

Similar to Bates, Kusleika does not teach direct control of the tethers 290. In contrast, the tethers 290 are attached to the guidewire 260, thus, the tethers do not control the orientation of the device. Accordingly, Kusleika fails to teach that “the at least one collecting basket can be deliberately oriented by the at least one wire-like flexible adjustment element” as recited in amended Claim 4.

Additionally, Kusleika teaches opening and closing of the basket 270 by different mechanisms. The opening of the basket 270 disclosed in Kusleika is caused by the relative movement of the proximal and distal bands 272, 274 and the closing of the basket is caused by

sliding an external catheter distally, which forces the basket to close by pulling the tethers 290 closer to the guidewire 260. Thus, Kusleika fails to teach that “the at least one collecting basket can be deliberately oriented by the at least one wire-like flexible adjustment element and changed in shape outside the channel element to expand sufficiently to increase the diameter of said cavity and enable the object to move within said cavity into said basket and to contract sufficiently to decrease the diameter of said cavity and enable capture of the object within said cavity of said basket” as recited in amended Claim 4.

Finally, as depicted in Figures 1A and 1B and as specifically stated in Kusleika, tethers 290 are attached to the proximal lip 286 of the basket 270 and to the guidewire 260. Apart from the connection at the proximal lip 286 of the basket 270, Kusleika does not disclose any interaction or integration between the tethers 290 and the basket 270. This non-integration is further shown in Figures 1A and 1B, which depict the tethers 290 extending outside the basket 270 to the guidewire 260. Accordingly, the tethers 290 of Kusleika fails to teach “at least one wire-like flexible adjustment element integrated with said woven fiber extends along an inner or outer surface of said basket from a proximal region of said basket to a distal region of said basket” as recited in Claim 4.

As neither Kusleika nor Bates teach an “expandable collecting basket of woven fiber . . . wherein at least one wire-like flexible adjustment element integrated with said woven fiber extends along an inner or outer surface of said basket from a proximal region of said basket to a distal region of said basket,” and that “the at least one collecting basket can be deliberately oriented by the at least one wire-like flexible adjustment element and changed in shape outside the channel element to expand sufficiently to increase the diameter of said cavity and enable the object to move within said cavity into said basket and to contract sufficiently to decrease the diameter of said cavity and enable capture of the object within said cavity of said basket” as recited in amended Claim 4, Kusleika and Bates independently, or in combination, fail to teach all of the features of amended Claim 4, and cannot render the claim obvious.

Additionally, Applicant respectfully submits that the Examiner has failed to cite adequate support for the combination of Kusleika and Bates. The Examiner asserts that a person skilled in the art would combine the wire 32 for expanding the basket of Bates with the basket 270 of

Application No.: 10/527,390
Filing Date: October 17, 2005

Kusleika in order to create an embodiment in which the basket 270 could be opened, and to additionally strengthen the basket 270 of Kusleika. However, the basket 270 disclosed by Kusleika is already openable by altering the relative position of the proximal and distal bands 272, 274. As the basket 270 of Kusleika is already openable, a person of skill in the art would not combine a wire-like flexible element from Bates to open the basket 270 of Kusleika. Additionally, a person skilled in the art would not expect the addition of a flexible element to strengthen the basket 270 taught in Kusleika, and even if the addition of the flexible element would strengthen the basket 270 of Kusleika, a person of skill in the art would have no reason to want to strengthen this basket as there is not indication of a need for stronger baskets. Thus, as the justifications noted by the Examiner for the addition of features of Bates to Kusleika achieve the same functionality already disclosed in Kusleika and achieve a result that is neither plausible nor known as desirable, the Examiner has failed to cite any valid reason for combining Bates and Kusleika.

Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of Claim 4 over Kusleika in view of Bates.

Dependent Claims

Claim 4 is the only pending independent claim. Claims 5-14, 16, 17, 20-29 and 31-33 depend directly or indirectly from amended independent Claim 4 and thus incorporate all of the patentable features of amended Claim 4. Applicant respectfully submits that Claims 5-14, 16, 17, 20-29 and 31-33 are patentable for at least the same reasons as discussed above in relation to Claim 4.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this

Application No.: 10/527,390

Filing Date: October 17, 2005

application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

The undersigned has made a good faith effort to respond to all of the noted rejections and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if an issue requires clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve any such issue promptly.

Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art discloses or teaches, even if not expressly discussed herein.

Any remarks in support of patentability of one claim should not be imputed to any other claim in this or a related application, even if similar terminology is used. Any remarks referring to only a portion of a claim should not be understood to base patentability on solely that portion; rather, patentability must rest on each claim taken as a whole.

Application No.: 10/527,390
Filing Date: October 17, 2005

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 9 / 13 / 10

By: 

Thomas R. Arno
Registration No. 40,490
Attorney of Record
Customer No. 20995
(619) 235-8550

9659450
091310